IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/01/2004

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THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.789 of 1997

Ellammal .. Petitioner

-Vs-

1. The District Collector
Tiruvannamalai.

2. The Special Tahsildar
(ADW) Polur, TVS District. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.T. Gowthaman
For M/s. Muthumani Doraisami

For Respondents : Mr.M.S. Palanisamy, AGP

:O R D E R

The petitioner seeks a writ of Certiorarified Mandamus calling for the records relating to the order of the second respondent in RCA/1777 /96 dated 31.12.1996, quash the same and forbear the respondents from acquiring her land without duly complying with the statutory provisions contained in the Tamil Nadu Acquisition of Land for the Harijan Welfare Schemes Act, 1978 (in short the "Act").

2. The petitioner is the owner of the land of an extent of 0.50.0 hectares comprised in Survey No.67/1B, 67/2B and 67/3B, Devarayanpalayam Village, Polur Taluk, Tiruvannamalai Sambuvarayar District, which is proposed to be acquired by the respondents under the provisions of the Act.

3. Before issuing notice under Section 4(1) of the Act, the second respondent issued a notice under Section 4(2) of the Act read with Rule 3(1) of the Tamil Nadu Acquisition of Land for the Harijan Welfare Schemes Rules, 1979 (in short the "Rules"), in Form I. The said notice dated 29.11.1996 issued in Form I under Rule 3(1) read with Section 4(2) of the Act, calling for the objections from the petitioner/ owner of the land in writing on or

before 20.12.1996, was sent by registered post with acknowledgment due.

4. From the records, I find that when the said registered notice was proposed to be served on the petitioner on 5.12.1996, she was not available and also on 6.12.1996. But, on 7.12.1996, there is an endorsement that the petitioner refused to receive it. Therefore, it appears that the respondents served a fresh notice in Form I under Rule 3(1) of the Rules read with Section 4(2) of the Act, in person on 6.1.19 97 giving time to file her objection on or before 10.1.1997.

5. The above facts are not disputed by the learned Additional Government Pleader, in view of the materials available on record.

6. Assuming the respondents would contend that since the petitioner refused to receive Form I notice dated 29.11.1996 on 7.12.1996, she is not entitled to complain that she has been denied fair and reasonable opportunity to make her objections to the impugned acquisition, I am unable to appreciate the same, in view of the fact that only on 7 .12.1996, the petitioner refused to receive the notice dated 29.11.19 96, wherein the petitioner was required to submit her objection on or before 20.12.1996. If 7.12.1996 is construed as the date of effective service of notice dated 29.11.1996 in Form I, it is apparent on the face of the record that the said notice does not satisfy 15 days time required to submit her objection as contemplated in Form I under Rule 3(1) of the Rules read with Section 4(2) of the Act. The service of Form-I notice under Rule 3(1) of the Rules read with Section 4(2) of the Act on the petitioner on 6.1.1997 giving time to file her objections on or before 10.1.1997 also does not satisfy the condition of giving 15 days time for submitting her objections. Hence, the impugned proceedings is quashed, but, without prejudice to the right of the respondents to issue fresh notice and proceed in accordance with law, if they are so advised.

The writ petition is allowed. No costs.

Index : Yes
Internet : Yes

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To

1. The District Collector
Tiruvannamalai.

2. The Special Tahsildar
(ADW) Polur, TVS District.

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